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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE**

UNITED STATES OF AMERICA for the use of NORTH STAR
TERMINAL & STEVEDORE COMPANY, d/b/a NORTHERN
STEVEDORING & HANDLING, and NORTH STAR TERMINAL
& STEVEDORE COMPANY, d/b/a NORTHERN
STEVEDORING & HANDLING, on its own behalf,

Plaintiffs,

and

UNITED STATES OF AMERICA for the use of SHORESIDE
PETROLEUM, INC., d/b/a MARATHON FUEL SERVICE, and
SHORESIDE PETROLEUM, INC., d/b/a MARATHON FUEL
SERVICE, on its own behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER ROCK
PRODUCTS, INC.; UNITED STATES FIDELITY AND
GUARANTY COMPANY; and ROBERT A. LAPORE,

Defendants.

No. 3:98-cv-9 (TMB)

**REPLY TO PLAINTIFF'S OPPOSITIONS TO MOTION TO BAR THE INTRODUCTION
OF MR. CALLOW'S OPINIONS TESTIMONY, AND REPORT**

North Star donates less than two pages of its combined Opposition pleading to USF&G's instant Motion, simply filing a Joinder with Shoreside and Metco's Opposition. Shoreside and Metco chose to donate 25 of their 37 page Opposition to directly quoting the transcript of Mr. Callow, while attaching that transcript as an Exhibit. Why the repetition and duplication? The answer is simple, Plaintiffs have no basis upon which to defeat USF&G's Motion.

The trier of fact will not be aided by hearing legal opinions of Mr. Callow. The same invade the province of the Court. Also, Mr. Callow does not possess the appropriate qualifications on the subject matter upon which he desires to express an opinion. As stated in USF&G's instant Motion, Mr. Callow has never before testified as an expert. Mr. Callow has never before represented a surety. Mr. Callow even acknowledges that he has no recent involvement in insurance litigation, a topic which he fails to acknowledge is separate and distinct from suretyship law. What Mr. Callow's "expert testimony" does is simply perpetuate Plaintiff's own confusion between insurance law and suretyship law. Mr. Callow is simply following the lead of Plaintiff's counsel by making conclusory, self-serving and subjective representations based upon lack of facts, since Plaintiffs chose not to conduct Discovery through depositions of the USF&G employees directly involved in the handling of Plaintiff's claims.

Plaintiffs suggest that the proffered expert testimony of Mr. Callow is reliable based upon his education, training and experience. However, Mr. Callow admits he had no education in surety law, nor any training, nor for that matter any experience whatsoever. Mr. Callow is simply unqualified to render the unsupported opinions he suggests in his Report, and expressed at his deposition. Simply put, Mr. Callow is not qualified to render an opinion pursuant to Evidence Rule 702, based upon his lack of knowledge and experience. Kumho Tire Co. Ltd., Et., v. Charming, 119 S. Ct. 1167

(1999). Further, the gravamen of Plaintiff's claim against USF&G is an alleged failure to conduct an investigation of a claim against the suety bond, which is not a subject area that an individual untrained in surety practice can address.

Finally, the testimony of Mr. Callow is based upon speculation and heresay, is totaling lacking in foundation, and the probative value of the testimony is far outweighed by the prejudice of its admission. Beech Aircraft v. U.S., 51 F. 3d 834 (9th Cir. 1995). His testimony should be excluded, as it is based on the unfounded assumptions and legal conclusions articulated by counsel in Plaintiff's Discovery Responses. Target Market Publishing, Inc., v. Advo, Inc., 136 F. 3d 1139 (7th Cir. 1998).

Dated this 2nd day of June, 2006.

/s Herbert A. Viergutz

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this document was served by electronic notification on this 2nd day of June, 2006, to:

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